Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to Parts 73 and 90 of the	)	RM-9719
Commission's Rules to Authorize the	)	
Transmission of Emergency Signals	)	
on Channel 200	)	

ORDER

Adopted: January 22, 2001 **Released: January 24, 2001**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 2, 1999, the Commission received a Petition for Rulemaking (Petition) filed by Federal Signal Corporation (Federal Signal) requesting amendment of Parts 73 and 90 of the Commission's Rules[1] to allocate Channel 200 (87.9 MHz) for the use and operation of an Emergency Radio Data System (ERDS).[2] On September 14, 1999, the Commission issued a *Public Notice*[3] inviting comments by interested parties.[4] After careful review of Federal Signal's Petition and reply, as well as the numerous comments received in response to the *Public Notice*, we conclude that a rulemaking proceeding on this issue is not warranted.

II. BACKGROUND

2. Federal Signal proposes the use of Channel 200 on a nationwide basis for the exclusive operation of ERDS by existing and future public safety licensees.[5] Federal Signal envisions that ERDS would be a low power system for disseminating emergency information to motorists so that they may take appropriate action to avoid traffic accidents, oncoming emergency vehicles and weather-related disasters.[6] ERDS would be capable of transmitting voice and data emergency messages from both

[1] Part 73 of the Commission's Rules governs the Radio and Television Broadcast Services, and Part 90 of the Commission's Rules governs the Private Land Mobile Radio Services. 47 C.F.R. Parts 73, 90.

[2] Petition for Amendment to Part 73 and 90 of the Commission's Rules to Authorize the Transmission of Emergency Signals on Channel 200, filed by Federal Signal Corporation (Federal Signal), RM-9719 (Aug. 2, 1999) (Petition).

[3] *Public Notice*, Office of Public Affairs, Reference Operations Division, Petitions for Rulemaking Filed, Report No. 2361 (rel. Sept. 14, 1999).

[4] The initial comment dates were October 14, 1999, for comments and October 25, 1999, for replies. At the request of Federal Signal, the date for reply comments was extended to November 8, 1999. *See Order*, DA 99-2351 (WTB PSPWD rel. Oct. 28, 1999).

[5] Petition at 1.

[6] *Id.*

mobile and fixed locations to broadcast channels. Power output would be limited to a 1-watt effective radiated power.[7] When activated, ERDS automatically would tune a car radio to the ERDS's operating channel (200), even if the car radio were not in use or being used to play an audiocassette or a compact disc.[8]

3. Numerous comments were filed in response to the *Public Notice*. All but one commenter oppose the establishment and implementation of ERDS.[9] Comments in opposition to Federal Signal's proposal argue that either there is no need for ERDS, or that the proposal can be accommodated in other spectrum specifically allocated for such communications.[10] Specifically, they assert that current public safety systems, and newly developed ones, such as the Intelligent Transportation Services (ITS), are capable of providing more than adequate safety service to the public.[11] They suggest that ERDS, if implemented, should operate on spectrum dedicated to public safety.[12] Finally, opponents express serious interference concerns regarding reception to TV Channel 6 and FM stations operating on 88.1 MHz.[13] They also indicate that ERDS, as proposed, could negatively affect radio's future transition to digital.[14]

4. We nonetheless note that attached to the Petition was correspondence from various police and fire departments supporting the ERDS proposal.[15] These letters generally contend that there is

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[7] *Id.*

[8] The proposal envisions installation of ERDS in a motorist's car radio during the manufacturing process. *Id.* at 3.

[9] Comments were filed by Richard L. Buckmaster (Buckmaster); Educational Information Corporation (EIC); Station WCPE (WCPE); Larry Erickson (Erickson); Dennis P. Tucker (Tucker); National Association of Broadcasters (NAB); Grupo Televisa (Televisa) (licensee of Station XETV, Channel 6, Tijuana, Mexico); Society of Broadcast Engineers, Inc. (SBE); REC Networks (REC); National Public Radio (NPR); KHQ, Inc. (KHQ) (licensee of Channel 6, Spokane, Washington); Virginia Center for the Public Press (Virginia Center); WKJCE Radio (WKJCE); and the Amherst Alliance (a citizens' advocacy group). A joint set of comments also was filed by Arkansas Educational Telecommunications Commission on behalf of the University of Arizona; Central Michigan University; Prairie Public Broadcasting, Inc.; Rocky Mountain Public Broadcasting Network; and Station KVIE, Inc. (PTV Channel 6 Licensees). Additionally, reply comments were filed by REC; Ted M. Coopman (Coopman); NAB; Televisa; Federal Signal; and the Walt Disney Company, on behalf of its ABC, Inc. subsidiary (ABC).

[10] *See* NAB Reply Comments at 1.

[11] *See id.* at 2; Televisa Reply Comments at 2; WKJCE Additional Comments at 2-3; EIC Comments at 1.

[12] NAB Reply Comments at 3; Televisa Reply Comments at 2.

[13] *See* KHQ Comments at 1; PTV Channel 6 Licensees at 1-3; ABC Reply Comments at 1; NAB Reply Comments at 1.

[14] *See* NAB Reply Comments at 4; NPR Comments at 6.

[15] *See, e.g.*, Letter from Lt. Andrew Agens, Mt. Olivet Police Department, New Jersey, to Jerry Williams, Director, ERDS Initiative Committee, Federal Signal Corporation (Jan. 26, 1998); Letter from Russell Sanders, Nacogdoches Fire Department, Training Division, Nacogdoches, Texas, to Jerry Williams, Director, ERDS Initiative Committee, Federal Signal Corporation (Mar. 19, 1998); Letter from Terry L. Cramer, Manager, West End Ambulance Service, Johnstown, Pennsylvania, to Jerry Williams, Director, ERDS Initiative Committee, Federal Signal Corporation (undated); and Letter from Neil W. Curran, Chief of Police, Taos Police Department, (continued....)

a significant need for improved warning methods that will overcome driver preoccupation by providing more specific advanced warning, information, and instruction to the motoring public.[16] They also submit that with the noise reduction efforts of the auto manufacturers, it becomes increasingly difficult for operators of newer cars to hear external audible warning devices.[17] Therefore, they assert, the use of ERDS may be able to prevent accidents to emergency and private vehicles, as well as save lives.[18]

III. DISCUSSION

5. After careful review of the instant record, we agree with most of the commenters and are not persuaded that a new rulemaking proceeding is warranted at this time. In this connection, we believe that current and planned radio communications services should more than adequately meet motorists' need and demand for receiving timely, localized emergency information. Contrary to Federal Signal's assertion, reliance on timely messages is placed *not only* on the Travelers Information Stations (TIS),[19] and the Emergency Alert System (EAS) but, more importantly, on newly developed ITS services.[20] While TIS and EAS will continue to play a complementary role in the country's public safety communications scheme, it is anticipated that ITS will significantly improve the efficiency and safety of surface transportation systems.

6. In 1991, a national program within the U.S. Department of Transportation (DOT) was established to develop ITS within the United States.[21] On June 11, 1998, the Commission initiated a rulemaking proceeding, which proposed to allocate the 5.85-5.925 GHz band on a primary basis to the mobile service for use by Dedicated Short Range Communications (DSRC)-based ITS operations.[22] On October 21, 1999, the Commission adopted a *Report and Order* allocating 75 MHz of radio spectrum to

(Continued from previous page)
Taos, New Mexico, to Jerry Williams, Director, ERDS Initiative Committee, Federal Signal Corporation (Mar. 6, 1998).

[16] *See* Fairview Township Police Department Comments at 1.

[17] *See* West End Ambulance Service Comments at 1.

[18] *See* Nacogdoches Fire Department Comments at 1.

[19] *See* Federal Signal Reply Comments at ii.

[20] It is true that TIS and EAS have been mainstays in the transmission of emergency communications to the public. TIS provides motorists with timely information pertaining to traffic and road conditions, traffic hazard and travel advisories if they "tune in" to a TIS channel, whereas, EAS communicates emergency data of a diverse nature to a widely dispersed audience. Specifically, the EAS provides the President with the capability to provide the immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. See 47 C.F.R. § 90.242 for the rules governing TIS, and 47 C.F.R. Part 11 for the rules governing EAS.

[21] The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established this national program. *See* Pub. L. No. 102-240, 105 Stat. 1914 (1991).

[22] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, *Notice of Proposed Rule Making*, ET Docket No. 98-95, 13 FCC Rcd 14321 (1998).

implement the proposal.[23] We envision that ITS services will improve traveler safety and decrease traffic congestion, among other goals.[24] In particular, DSRC-based ITS systems are being designed to transfer information via a short-range wireless link between vehicles and roadside systems.[25] An example of emerging applications is "Incident Management" operations which would use roadway sensors and DSRC-equipped vehicles to detect more quickly traffic congestion and dispatch any necessary emergency personnel or take other needed action.[26]

7. Contrary to the assertions of Federal Signal, we believe that the needs of ERDS can be addressed by other existing radio services.[27] In this regard, we agree with those commenters who state that the ERDS proposal is unnecessary given allocation of a significant amount of spectrum for use by DSRC systems operating in the ITS radio service.[28] Further, we believe that initiating a new rulemaking proceeding to adopt ERDS would essentially be duplicative of the pending ITS/DSRC proceeding given that these services have substantially similar objectives. Thus, at this juncture, we believe that the more prudent course of action would be to incorporate the instant record into the ITS/DSRC proceeding to promote a more robust and complete record in that proceeding.[29] As a result, the Commission would be able to consider Federal Signal's suggestions during its deliberations, while avoiding the establishment of inconsistent or duplicative radio services.

8. Commenters further object to Federal Signal's proposal because of interference concerns, *i.e.*, interference to viewers and listeners of TV Channel 6 and FM stations operating on 88.1 MHz.[30] The National Association of Broadcasters (NAB), in particular, argues that Federal Signal not only conducted limited testing for analyzing interference to FM stations and TV Channel 6 operations, but failed to test on other types of receivers, such as portable, personal and clock radios.[31] Amherst Alliance asserts that the ERDS proposal would universally preempt 87.9 MHz operations, thus, unduly

[23] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, *Report and Order*, ET Docket No. 98-95, 14 FCC Rcd 18221 (1999) (*ITS Report and Order).*

[24] Section 6059 of ISTEA defines ITS as the development or application of electronics, communications, or information processing (including advanced traffic management systems, commercial vehicle operations, advanced traveler and public information systems, commercial and advanced vehicle control systems, satellite vehicle tracking systems, etc.) used singly or in combination to improve the efficiency and safety of surface transportation systems. *See* Pub. L. No. 102-240, 105 Stat. 1914 (1991).

[25] See *ITS Report and Order*, 14 FCC Rcd at 18221 ¶ 1.

[26] *See id.* at 18222 ¶ 2 n.4.

[27] Federal Signal Reply Comments at ii.

[28] *See, e.g.*, NAB Reply Comments at 1-2.

[29] The Commission deferred consideration of licensing and service rules and spectrum channelization plans to a later proceeding because standards addressing such matters were still under development by DOT. *See ITS Report and Order*, 14 FCC Rcd at 18221 ¶ 1.

[30] *See* KHQ Comments at 1; PTV Channel 6 Licensees at 1-2; ABC Reply Comments at 1; NAB Reply Comments at 1; SBE Comments at 1-2.

[31] *See, e.g.*, NAB Reply Comments at 4.

restricting the availability of radio frequencies for low power radio and hampering this new service.[32] In addition, several commenters have expressed serious reservations concerning ERDS's effect on radio's future transition to the digital mode.[33] Federal Signal, however, asserts that commenters' interference claims are overstated.[34] In its view, precisely controlled (directional) antenna patterns and tailored, reduced power levels can be used at fixed sites to further limit interference concerns.[35] For the same reasons stated previously, we believe that this issue, if relevant to ERDS operations, is best explored in the pending DRSC/ITS rulemaking and, therefore, decline to discuss the merits here.

IV. CONCLUSION

9. Because the Commission is currently considering licensing and service rules in its ITS/DSRC rulemaking proceeding, we believe that a separate rulemaking regarding ERDS, as Federal Signal proposes, would be duplicative, and, therefore an unnecessary burden on the Commission's resources.[36] Notwithstanding our decision to dismiss Federal Signal's request and in recognition of the significant overlap between the issues developed in the present record and that of the ITS/DSRC rulemaking proceeding, we hereby incorporate the record of this matter into that of the ITS/DSRC rulemaking.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i), (j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), and 303(r), and Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), that the Petition for Rulemaking filed by Federal Signal Corporation, RM-9719, on August 2, 1999, **IS HEREBY DISMISSED WITHOUT PREJUDICE.**

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[32] Amherst Alliance Comments at 1; REC Comments at 1, 4-5. The Commission has recently authorized the licensing of two new classes of FM radio stations - - one operating at a maximum power of 100 watts and one at a maximum power of 10 watts. *See* Creation of Low Power Radio Service, *Report and Order*, MM Docket No. 99-25, 15 FCC Rcd 2205 (2000).

[33] For example, NAB believes that the radio industry will be moving into the digital field in the form of In-Band, On-Channel (IBOC) digital radio service. It contends that the basic IBOC system relies on placing the digital signal in the "sidebands" of the main channel, thus increasing the possibility for interference from new services in the FM band. NAB submits that under the subject proposal, one of the sidebands of the 88.1 MHz signal could be affected by the ERDS signal operating on 87.9 MHz and *vice versa*. NAB Comments at 6. *See also* KHQ Comments at 3; PTV Channel 6 Licensees Comments at 1; ABC Reply Comments at 1.

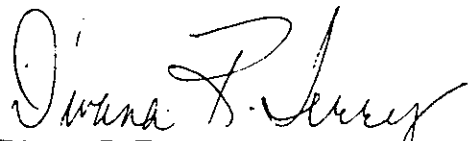
[34] *See* Federal Signal's Reply Comments at 11.

[35] *Id.* at iii.

[36] There is significant, as well as substantial, precedent for dismissing a petition for rulemaking if it is either redundant or ill-advised. For examples of the former, see Letter from Charles W. Logan, Chief, Policy and Rules Division, Mass Media Bureau, FCC to Michael Scott Clem, President Trident Media and Broadcasting, Inc. (May 5, 1998), 13 FCC Rcd 9364 (1998), and Establishment of a New Fixed Radio Service in the 470 MHz Bands, *Memorandum Opinion and Order*, 68 FCC 2d 1456 (1978). Also, for instances of the latter, see *In re* Petition by Best, CCC and others for Rulemaking to Clarify Standards in All Comparative Broadcast Proceedings, *Memorandum Opinion and Order*, 32 FCC 2d 523 (1971).

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



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